

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

~~The Secretary, Housing and Urban
Development, on behalf of~~
Ana Hernandez, Jessica Hernandez,
and Julie Hernandez,

Charging Party,

v.

Nelson Mobile Home Park and
Pat Witmer, Manager of
Nelson Mobile Home Park,

Respondents.

HUDALJ 04-91-0040-1
Issued: December 6, 1995

Deborah Ann Walker, Esquire
For the Charging Party

Paul Morris, Esquire
For Respondents

Before William C. Cregar
Administrative Law Judge

INITIAL DECISION ON REMAND AND ORDER

Statement of the Case

On August 15, 1995, the United States Court of Appeals for the Eleventh Circuit affirmed in part and vacated and remanded in part the Initial Decision and Order in the above captioned case. The court affirmed the determination that Respondents violated the Fair Housing Act ("the Act"), and the award of a civil penalty in the amount of \$5,000. Finding insufficient evidentiary support that Respondents' refusal to rent to Ana Hernandez because of her familial status caused \$30,000 of emotional distress damages to her, the court remanded this case to the Secretary for a redetermination of the amount of

any damages suffered by Ms. Hernandez resulting from Respondents' violation of the Act.

Summary of Initial Decision and Order

Nelson Mobile Home Park ("the Park") is a mobile home community located in Miami Beach, Florida. During July 1990, Ana Hernandez, a single mother with two daughters 6 and 8 years old, had become interested in living in the park because the man she was dating planned to live there. It was also close to a playground and to various restaurants where she believed she could obtain employment as a waitress. One unit in particular displaying a "for sale" sign attracted her because it had sufficient space in the back for a swing set for her children. She arranged for a \$10,000 loan to purchase the unit. When she visited the Park manager's office to inquire about the availability of units, the Park manager told her that she could not purchase a mobile home in the park because it was an "adult park" and children were not allowed.

Ms. Hernandez filed a complaint with the Department of Housing and Urban Development ("HUD"). After investigating the complaint, HUD issued a Determination of Reasonable Cause and Charge of Discrimination on February 17, 1993. Following an evidentiary hearing on July 7, 1993, I issued an Initial Decision and Order on December 2, 1993, finding that Respondents had violated the Act. The Initial Decision and Order became a final decision of the Department on January 2, 1994. Respondents were required to cease their discrimination against families with children and were assessed a civil penalty in the amount of \$5,000; Ms. Hernandez was awarded \$30,000 for emotional distress. The high damage award was based to a great extent on my determination that a preponderance of record evidence demonstrated that Respondents' refusal to allow Ms. Hernandez to live in the Park because of her children, aggravated a preexisting manic depressive condition resulting in lost appetite, suicidal thoughts, and an inability to perform routine tasks. I further concluded that Ms. Hernandez' two children also reacted negatively to her condition and that this unhappy family situation continued until they moved into a new apartment in February 1991. The court of appeals reversed the \$30,000 damage award, concluding that the record established other possible causes for the aggravation of Ms. Hernandez' manic depression, such as her breakup with her boyfriend and her discontinuing therapy. Accordingly, the court remanded this matter to the Secretary for further proceedings in accordance with its opinion.

Discussion

In addition to the conclusion that the Park's rejection of Ms. Hernandez aggravated her preexisting manic depression, the Initial Decision concluded that Ms. Hernandez' history of economic hopelessness or powerlessness exacerbated the emotional distress she

experienced as a result of Respondents' conduct. The Initial Decision states:

Economically well-off in her second marriage, by the summer of 1990 she faced the unrelieved prospect of raising two girls relying on her income as a waitress and/or her welfare payments. Having personally experienced extreme poverty, she intensely felt the change in her fortunes and its impact on her children. This background explains the *psychic* importance to Ms. Hernandez of adequate shelter. I credit her testimony and that of Ms. Seghi, that Ms. Hernandez had become obsessed with the desire to reconstruct her former circumstances by owning her own home, with a backyard and swings for her girls.

HUD v. Nelson Mobile Home Park, 2 Fair Housing-Fair Lending (P-H) ¶ 25,063, 25,612 (HUDALJ Dec. 2, 1993).

The court excluded consideration of damages for emotional distress resulting from Ms. Hernandez' preexisting manic depression. However, it let stand my consideration of her history of contrasting material comfort and poverty. Considering that Respondents' conduct was not particularly egregious, but considering that Ms. Hernandez was more vulnerable than the average person to damage from such conduct because of the vicissitudes of her prior economic condition, I conclude that she is entitled to an award in the amount of \$7,500 for emotional distress.

ORDER

Having concluded that Respondents Nelson Mobile Home Park and Pat Witmer violated provisions of the Fair Housing Act that are codified at 42 U.S.C. §§ 3604 (a)-(c), as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 C.F.R. §§ 100.50 (b) (1)-(4), 100.60 (b) (1)-(2), 100.65, and 100.75 (a)-(c), it is hereby

ORDERED that,

the following paragraph shall replace Paragraph 5 of my Order of December 2, 1995:

5. Within forty-five days of the date on which this Initial Decision and Order becomes final, Respondent Nelson Mobile Home Park shall pay damages in the amount of \$7,500 to Complainant Ana Hernandez to compensate her for the losses that resulted from Respondent's discriminatory activity.

This Order is entered pursuant to the applicable section of the Fair Housing Act, which is codified at 42 U.S.C. § 3612 (g) (3), and HUD's regulation that is codified at 24 C.F.R. § 104.910, and it will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary within that time.

WILLIAM C. CREGAR
Administrative Law Judge

Dated: December 6, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by William C. Cregar, Administrative Law Judge, HUDALJ 04-91-0040-1, were sent to the following parties on this 6th day of December, 1995, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Deborah Walker, Esq.
Office of Regional Counsel
U.S. Department of Housing and
Urban Development
75 Spring Street, SW., Room 688
Atlanta, GA 30303-3388

Paul Morris, Esq.
2600 Douglas Road, Penthouse II
Coral Gables, FL 33134

Andrew J. Boros, Esq.
3050 Biscayne Boulevard, Suite 1002
Miami, FL 33137

Lisa Wilson, Esq.
Dennis J. Dimsey, Esq.
U.S. Department of Justice
Civil Rights Division
P.O. Box 66078
Washington, DC 20035-6078

INTEROFFICE MESSENGER:

Elizabeth Julian, Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100
Washington, D.C. 20410

Harry L. Carey, Assistant General Counsel for Fair Housing
Jonathan Strong, Deputy Assistant General Counsel
for Fair Housing Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10270
Washington, D.C. 20410